

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2725**

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**Introduced by Assembly Member Nestande**

February 19, 2010

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~~An act to amend Section 19025 of, to add Section 19137 to, to add Chapter 9.2 (commencing with Section 19740) to Part 10.2 of Division 2 of, and to repeal Sections 19136.1, 19136.3, and 19138 of, the Revenue and Taxation Code, to amend Section 35.20 as added to the Budget Act of 2009 by Assembly Bill 88 of the 2007–08 Regular Session, and to repeal Section 8 of Chapter 1 of the First Extraordinary Session of the Statutes of 2008, relating to taxation. An act to repeal Section 19138 of the Revenue and Taxation Code, relating to taxation.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2725, as amended, Nestande. ~~Income taxation: administration. Corporation taxes: penalty.~~

*Existing law imposes a penalty on a taxpayer subject to the Corporation Tax Law with a specified understatement of tax, as defined, in an amount equal to 20% of that understatement, except as specified.*

*This bill would delete the provisions imposing that penalty.*

~~(1) Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.~~

~~This bill would adjust the amount of those installments under specified circumstances.~~

~~(2) Existing law modifies a specified provision of the Internal Revenue Code, with respect to an individual's failure to pay estimated income tax, by revising the amount of required installment payments for each taxable year beginning on or after January 1, 2009. Existing law also modifies that law by providing that a specified provision shall not apply if the adjusted gross income on the individual's return is \$1,000,000 or greater, or \$500,000 in the case of a married individual filing a separate return.~~

~~This bill would repeal those provisions.~~

~~(3) Existing law imposes personal income and corporate taxes collected and administered by the Franchise Tax Board.~~

~~This bill would require the Franchise Tax Board to administer a tax amnesty program during the period beginning February 1, 2011, and ending on March 27, 2011, inclusive, as provided.~~

~~(4) Existing law imposes a penalty on a taxpayer subject to the Corporation Tax Law with a specified understatement of tax, as defined, in an amount equal to 20% of that understatement.~~

~~This bill would repeal those penalty provisions.~~

~~This bill would also make changes regarding sections of the Revenue and Taxation Code added by AB 1452 of the 2007-08 Regular Session, relating to credits against taxes imposed by the Corporation Tax Law and fees required under the Personal Income Tax Law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 19138 of the Revenue and Taxation Code  
2     is repealed.  
3     19138. (a) (1) A taxpayer subject to the tax imposed under  
4     Part 11 (commencing with Section 23001) with an understatement  
5     of tax in excess of one million dollars (\$1,000,000) for any taxable  
6     year shall be subject to the penalty imposed under this section.  
7     (2) For taxpayers that are required to be included in a combined  
8     report under Section 25101 or authorized to be included in a  
9     combined report under Section 25101.15, the threshold amount  
10    prescribed in paragraph (1) shall apply to the aggregate amount  
11    of tax liability under Part 11 (commencing with Section 23001)  
12    for all taxpayers that are required to be or authorized to be included  
13    in a combined report.

~~(b) The penalty under this section shall be an amount equal to 20 percent of any understatement of tax. For purposes of this section, “understatement of tax” means the amount by which the tax imposed by Part 11 (commencing with Section 23001) exceeds the amount of tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year. For any taxable year beginning before January 1, 2008, the amount of tax paid on or before May 31, 2009, and shown on an amended return filed on or before May 31, 2009, shall be treated as the amount of tax shown on an original return for purposes of this section.~~

~~(c) The penalty imposed by this section shall be in addition to any other penalty imposed under Part 11 (commencing with Section 23001) or this part.~~

~~(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).~~

~~(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.~~

~~(f) (1) No penalty shall be imposed under this section on any understatement to the extent that the understatement is attributable to a change in law that is enacted, promulgated, issued, or becomes final after the earlier of either of the following dates:~~

~~(A) The date the taxpayer files the return for the taxable year for which the change is operative.~~

~~(B) The extended due date for the return of the taxpayer for the taxable year for which the change is operative.~~

~~(2) For purposes of this subdivision, a “change of law” means a statutory change or an interpretation of law or rule of law by regulation, legal ruling of counsel, within the meaning of subdivision (b) of Section 11340.9 of the Government Code, or a published federal or California court decision.~~

~~(3) The Franchise Tax Board shall implement this subdivision in a reasonable manner.~~

~~(g) No penalty shall be imposed under this section to the extent that a taxpayer’s understatement is attributable to the taxpayer’s reasonable reliance on written advice of the Franchise Tax Board,~~

but only if the written advice was a legal ruling by the Chief Counsel, within the meaning of paragraph (1) of subdivision (a) of Section 21012.

(h) This section shall apply to each taxable year beginning on or after January 1, 2003, for which the statute of limitations on assessment has not expired.

SECTION 1. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

—		—			
—		The following percentages of the estimated tax shall be paid on the 15th day of the—			
If the requirements of this subdivision are first met—					
		4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year.....	25 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	25	25	25	25
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year.....	—	—	33-1/2	33-1/3	33-1/2
After the last day of the 5th month and	—	—	50	50	50

before the 1st day  
of the 9th month  
of the taxable  
year.....

After the last day of  
the 8th month and  
before the 1st day  
of the 12th month  
of the taxable  
year.....

= = = 100

(e) ~~If a wholly owned subsidiary is first subject to tax under Section 23800.5 after the last day of the third month of the taxable year of owner, the amount of the next installment of estimated tax under subdivision (b) after the wholly owned subsidiary is subject to tax under Section 23800.5 shall not be less than the amount of the tax of the wholly owned subsidiary under Section 23800.5 and an amount equal to that amount shall be due and payable on the date the installment is required to be paid. For purposes of determining which installment is the next installment of estimated tax under subdivision (b), subdivision (b) shall be modified by substituting "includes the tax of a wholly owned subsidiary under Section 23800.5" for "exceeds the minimum tax specified by Section 23153."~~

(d) ~~The amendments made to this section by Section 1 of Chapter 1 of the First Extraordinary Session of the Statutes of 2008 shall apply to installments due for each taxable year beginning on or after January 1, 2009, and before January 1, 2010.~~

(e) ~~The amendments made to this section by Section 2 of Chapter 15 of the Fourth Extraordinary Session of the Statutes of 2009 shall apply to installments due for each taxable year beginning on or after January 1, 2010, and before January 1, 2011.~~

(f) ~~The amendments made to this section by the act adding this subdivision shall apply to installments due for each taxable year beginning on or after January 1, 2011.~~

~~SEC. 2. Section 19136.1 of the Revenue and Taxation Code is repealed.~~

~~SEC. 3. Section 19136.3 of the Revenue and Taxation Code is repealed.~~

1     ~~SEC. 4. Section 19137 is added to the Revenue and Taxation~~  
2     ~~Code, to read:~~

3     ~~19137. (a) There shall be added to the tax for amounts in each~~  
4     ~~taxable year for which amnesty could have been requested a penalty~~  
5     ~~in an amount determined as follows:~~

6     ~~(1) For amounts that are due and payable, as provided in~~  
7     ~~subdivision (f), on the last day of the tax amnesty period, an amount~~  
8     ~~equal to 50 percent of the accrued interest payable under Section~~  
9     ~~19101 for the period beginning on the last date prescribed by law~~  
10    ~~for the payment of that tax, determined without regard to~~  
11    ~~extensions, and ending on the last day of the tax amnesty period~~  
12    ~~specified in Section 19741.~~

13    ~~(2) For amounts that become due and payable, as provided in~~  
14    ~~subdivision (f), after the last date of the tax amnesty period, an~~  
15    ~~amount equal to 50 percent of the interest computed under Section~~  
16    ~~19101 on any final amount, including final deficiencies and~~  
17    ~~self-assessed amounts, for the period beginning on the last date~~  
18    ~~prescribed by law for the payment of the tax for the year of the~~  
19    ~~deficiency, determined without regard to extensions, and ending~~  
20    ~~on the last day of the tax amnesty period specified in Section~~  
21    ~~19741. In computing the final amount upon which the penalty is~~  
22    ~~computed, deposits made before the end of the tax amnesty period~~  
23    ~~pursuant to Section 19741 shall reduce the amount upon which~~  
24    ~~the penalty is computed. Payments or deposits made after the end~~  
25    ~~of the tax amnesty period shall not reduce the amount upon which~~  
26    ~~the penalty is computed.~~

27    ~~(3) For purposes of paragraph (2), Sections 19107, 19108,~~  
28    ~~19110, and 19113 shall apply in determining the amount computed~~  
29    ~~under Section 19101.~~

30    ~~(b) The penalty imposed by this section is in addition to any~~  
31    ~~other penalty imposed under Part 10 (commencing with Section~~  
32    ~~17001), Part 11 (commencing with Section 23001), or this part.~~

33    ~~(c) (1) This section shall not apply to any amounts that are~~  
34    ~~treated as paid during the tax amnesty period under paragraph (1)~~  
35    ~~or (2) of subdivision (b) of Section 19743.~~

36    ~~(2) This section shall not apply to any amount attributable to~~  
37    ~~an assessment resulting from either of the following:~~

38    ~~(A) An examination, within the meaning of Section 19032,~~  
39    ~~where the Franchise Tax Board first contacted the taxpayer in~~

1 ~~writing in connection with that examination before March 27,~~  
2 ~~2011, and that assessment was not final before March 27, 2011.~~

3 ~~(B) A proposed assessment under Section 19087 where the~~  
4 ~~Franchise Tax Board first contacted the taxpayer in writing in~~  
5 ~~connection with failing to file a return before March 27, 2011, and~~  
6 ~~that assessment was not final before March 27, 2011.~~

7 ~~(d) Article 3 (commencing with Section 19031), relating to~~  
8 ~~deficiency assessments, shall not apply with respect to the~~  
9 ~~assessment or collection of any penalty imposed by subdivision~~  
10 ~~(a) or the determination of when an amount is considered due and~~  
11 ~~payable.~~

12 ~~(e) A refund or credit for any amounts paid to satisfy a penalty~~  
13 ~~imposed under this section may be allowed only on the grounds~~  
14 ~~that the amount of the penalty was not properly computed by the~~  
15 ~~Franchise Tax Board.~~

16 ~~(f) For purposes of this section, amounts are due and payable~~  
17 ~~on the following dates:~~

18 ~~(1) For amounts of any liability disclosed on a return filed on~~  
19 ~~or before the date payment is due, with regard to any extension of~~  
20 ~~time to pay, the date the amount is established on the records of~~  
21 ~~the Franchise Tax Board, except that in no case shall it be prior to~~  
22 ~~the day after the payment due date.~~

23 ~~(2) For amounts of any liability disclosed on a return filed after~~  
24 ~~the date payment is due, with regard to any extension of time to~~  
25 ~~pay, the date the amount is established on the records of the~~  
26 ~~Franchise Tax Board.~~

27 ~~(3) For amounts of any liability determined under Section 19081~~  
28 ~~or 19082, pertaining to jeopardy assessments, the date the notice~~  
29 ~~of the Franchise Tax Board's finding is mailed or issued.~~

30 ~~(4) For all other amounts of liability, the date the assessment is~~  
31 ~~final.~~

32 ~~SEC. 5. Section 19138 of the Revenue and Taxation Code is~~  
33 ~~repealed.~~

34 ~~SEC. 6. Chapter 9.2 (commencing with Section 19740) is added~~  
35 ~~to Part 10.2 of Division 2 of the Revenue and Taxation Code, to~~  
36 ~~read:~~

~~CHAPTER 9.2. TAX AMNESTY 2011~~

~~19740. The Franchise Tax Board shall administer a tax amnesty for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.~~

~~19741. The tax amnesty shall be conducted during the period beginning February 1, 2011, and ending March 27, 2011, inclusive, pursuant to Section 19743. The tax amnesty shall apply to tax liabilities for taxable years beginning on or after January 1, 2005, and before January 1, 2009.~~

~~19742. (a) For any taxpayer who meets each of the requirements of Section 19743, both of the following shall apply:~~

~~(1) The Franchise Tax Board shall waive all unpaid penalties and fees imposed by this part for each taxable year for which tax amnesty is allowed, but only to the extent of the amount of any penalty or fee that is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for that taxable year.~~

~~(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer for the taxable years for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously assessed or proposed to be assessed.~~

~~(b) This chapter shall not apply to violations of this part for which, as of February 1, 2011, any of the following apply:~~

~~(1) A criminal complaint was filed against the taxpayer.~~

~~(2) The taxpayer is under criminal investigation.~~

~~(c) This chapter shall not apply to any nonreported or underreported tax liability amounts attributable to a potentially abusive tax avoidance transaction. For purposes of this chapter, a "potentially abusive tax avoidance transaction" means any of the following:~~

~~(1) A tax shelter as defined in Section 6662(d)(2)(C) of the Internal Revenue Code. For purposes of this chapter, Section 6662(d)(2)(C) of the Internal Revenue Code is modified by substituting the phrase "income or franchise tax" for "Federal income tax."~~



1     ~~(2) A reportable transaction, as defined in Section 6707A(c)(1)~~  
2     ~~of the Internal Revenue Code, with respect to which the~~  
3     ~~requirements of Section 6664(d)(2)(A) of the Internal Revenue~~  
4     ~~Code are not met.~~

5     ~~(3) A listed transaction, as defined in Section 6707A(c)(2) of~~  
6     ~~the Internal Revenue Code.~~

7     ~~(4) Any entity, investment plan or arrangement, or other plan~~  
8     ~~or arrangement which is of a type that the Secretary of the Treasury,~~  
9     ~~Internal Revenue Service, or the Franchise Tax Board determines~~  
10    ~~by regulations, notices, coordinated issue papers, or other official~~  
11    ~~public notification as having a potential for tax avoidance or~~  
12    ~~evasion.~~

13    ~~(5) A gross misstatement, within the meaning of Section~~  
14    ~~6404(g)(2)(D) of the Internal Revenue Code.~~

15    ~~(6) Any transaction to which Section 19774 applies.~~

16    ~~(d) No refund or credit shall be allowed with respect to any~~  
17    ~~penalty or fee paid with respect to a taxable year prior to the time~~  
18    ~~the taxpayer makes a request for tax amnesty for that taxable year~~  
19    ~~pursuant to Section 19743.~~

20    ~~(e) Notwithstanding Chapter 6 (commencing with Section~~  
21    ~~19301), no claim for refund or credit for any amounts paid in~~  
22    ~~connection with the tax amnesty program under this chapter shall~~  
23    ~~be allowed.~~

24    ~~19743. (a) This chapter shall apply to any taxpayer that~~  
25    ~~satisfies all of the following requirements:~~

26    ~~(1) During the tax amnesty period specified in Section 19741,~~  
27    ~~is eligible to participate in the tax amnesty.~~

28    ~~(2) During the tax amnesty period specified in Section 19741,~~  
29    ~~files a completed amnesty application with the Franchise Tax~~  
30    ~~Board electing to participate in the tax amnesty.~~

31    ~~(3) By June 1, 2011, does the following:~~

32    ~~(A) (i) For any taxable year eligible for the tax amnesty where~~  
33    ~~the taxpayer has not filed any required return, files a completed~~  
34    ~~original tax return for that year.~~

35    ~~(ii) For any taxable year eligible for the tax amnesty where the~~  
36    ~~taxpayer filed a return but underreported tax liability on that return,~~  
37    ~~files an amended return for that year.~~

38    ~~(B) Pays in full any taxes and interest due for each taxable year~~  
39    ~~described in clauses (i) and (ii) of subparagraph (A), as applicable,~~  
40    ~~for which amnesty is requested, or applies for an installment~~

1 payment agreement under subdivision (b). For taxpayers who have  
2 not paid in full any taxes previously proposed to be assessed, pays  
3 in full the taxes and interest due for that portion of the proposed  
4 assessment for each taxable year for which amnesty is requested  
5 or applies for an installment payment agreement under paragraph  
6 (2) of subdivision (b).

7 ~~(4) In the case of any taxpayer that has filed for bankruptcy~~  
8 ~~protection under Title 11 of the United States Code, submits an~~  
9 ~~order from a Federal Bankruptcy Court allowing the taxpayer to~~  
10 ~~participate in the tax amnesty.~~

11 ~~(b) (1) For purposes of complying with the full payment~~  
12 ~~provisions of paragraph (3) of subdivision (a), if the full amount~~  
13 ~~due is paid within the period set forth in paragraph (3) of~~  
14 ~~subdivision (c) of Section 19101 after the date the Franchise Tax~~  
15 ~~Board mails a notice resulting from the filing of an amnesty~~  
16 ~~application or the full amount is paid by June 1, 2011, the full~~  
17 ~~amount due shall be treated as paid during the amnesty period.~~

18 ~~(2) (A) For purposes of complying with the full payment~~  
19 ~~provisions of subparagraph (B) of paragraph (3) of subdivision~~  
20 ~~(a), the Franchise Tax Board may enter into an installment payment~~  
21 ~~agreement, but only if final payment under the terms of that~~  
22 ~~installment payment agreement is due and is paid no later than~~  
23 ~~June 30, 2012.~~

24 ~~(B) Any installment payment agreement authorized by this~~  
25 ~~subdivision shall include interest on the outstanding amount due~~  
26 ~~at the rate prescribed in Section 19521.~~

27 ~~(C) Failure by the taxpayer to comply fully with the terms of~~  
28 ~~an installment payment agreement under this subdivision shall~~  
29 ~~render the waiver of penalties and fees under Section 19742 null~~  
30 ~~and void, unless the Franchise Tax Board determines that the~~  
31 ~~failure was due to reasonable cause and not due to willful neglect.~~

32 ~~(D) In the case of any failure described under subparagraph (C),~~  
33 ~~the total amount of tax, interest, fees, and all penalties shall become~~  
34 ~~immediately due and payable.~~

35 ~~(e) (1) The application required under paragraph (2) of~~  
36 ~~subdivision (a) shall be in the form and manner specified by the~~  
37 ~~Franchise Tax Board, but in no case shall a mere payment of any~~  
38 ~~taxes and interest due, in whole or in part, for any taxable year~~  
39 ~~otherwise eligible for amnesty under this part be deemed to~~  
40 ~~constitute an acceptable amnesty application under this part. For~~

1 purposes of the prior sentence, the application of a refund from  
2 one taxable year to offset a tax liability from another taxable year  
3 otherwise eligible for amnesty shall not, without the filing of an  
4 amnesty application, be deemed to constitute an acceptable amnesty  
5 application under this part.

6 (2) The Legislature specifically intends that the Franchise Tax  
7 Board, in administering the amnesty application requirement under  
8 this part, make the amnesty application process as streamlined as  
9 possible to ensure that participation in the tax amnesty be available  
10 to as many taxpayers as possible without otherwise compromising  
11 the Franchise Tax Board's ability to enforce and collect the taxes  
12 imposed under Part 10 (commencing with Section 17001) and Part  
13 11 (commencing with Section 23001).

14 (d) Upon the conclusion of the tax amnesty period, the Franchise  
15 Tax Board may propose a deficiency upon any return filed pursuant  
16 to subparagraph (A) of paragraph (3) of subdivision (a), impose  
17 penalties and fees, or initiate criminal action under this part with  
18 respect to the difference between the amount shown on that return  
19 and the correct amount of tax. This action shall not invalidate any  
20 waivers previously granted under Section 19742.

21 (e) All revenues derived pursuant to subdivision (c) shall be  
22 subject to Sections 19602 and 19604.

23 19744. Notwithstanding any other provision of this chapter, if  
24 any overpayment of tax shown on an original or amended return  
25 filed under this article is refunded or credited within 180 days after  
26 the return is filed, no interest shall be allowed under Section 19340  
27 on that overpayment.

28 19745. (a) The Franchise Tax Board may issue forms,  
29 instructions, notices, rules, or guidelines, and take any other  
30 necessary actions, needed to implement this chapter, specifically  
31 including any forms, instructions, notices, rules, or guidelines that  
32 specify the form and manner of any acceptable form of amnesty  
33 application described in Section 19743.

34 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
35 Division 3 of Title 2 of the Government Code shall not apply to  
36 any standard, criterion, procedure, determination, rule, notice, or  
37 guideline established or issued by the Franchise Tax Board  
38 pursuant to this chapter.

39 19746. (a) The Franchise Tax Board shall conduct a public  
40 outreach program and adequately publicize the tax amnesty so as

1 to maximize public awareness and to make taxpayers aware of tax  
2 amnesty. In addition, the Franchise Tax Board shall make taxpayers  
3 aware of the new and increased penalties associated with taxpayer  
4 failure to participate in the tax amnesty.

5 (b) ~~The Franchise Tax Board shall make reasonable efforts to~~  
6 ~~identify taxpayer liabilities and, to the extent practicable, shall~~  
7 ~~send written notice to taxpayers of their eligibility for the tax~~  
8 ~~amnesty. However, failure of the Franchise Tax Board to notify a~~  
9 ~~taxpayer of the existence or correct amount of a tax liability eligible~~  
10 ~~for amnesty shall not preclude the taxpayer from participating in~~  
11 ~~the tax amnesty, nor shall that failure be grounds for abating the~~  
12 ~~penalty imposed under Section 19137.~~

13 ~~19747. Any taxpayer who has an existing installment payment~~  
14 ~~agreement under Section 19008 as of the start of the tax amnesty,~~  
15 ~~and who does not participate in the tax amnesty, may not be subject~~  
16 ~~to the penalty imposed under Section 19137 with respect to~~  
17 ~~amounts payable under that agreement.~~

18 ~~SEC. 7. Section 35.20, as added to the Budget Act of 2009 by~~  
19 ~~Assembly Bill 88 of the 2007–08 Regular Session, is amended to~~  
20 ~~read:~~

21 ~~Sec. 35.20. If legislation is enacted amending Section 13302~~  
22 ~~of the Government Code to allow the accrual of tax payments due~~  
23 ~~more than two months after the close of the fiscal year for~~  
24 ~~transactions occurring in the prior fiscal year, the Department of~~  
25 ~~Finance shall provide guidance pursuant to Section 13310 of the~~  
26 ~~Government Code with respect to the methodology to be employed~~  
27 ~~in determining accruals and the timing of implementation of any~~  
28 ~~changes in tax accrual practices. This change to accrual treatment~~  
29 ~~of corporation and franchise tax payments shall apply to the~~  
30 ~~2007–08 fiscal year and the balance of the accrual change to~~  
31 ~~corporation income and franchise tax payments shall be applied~~  
32 ~~to the 2008–09 fiscal year and subsequent fiscal years.~~

33 ~~SEC. 8. Section 8 of Chapter 1 of the First Extraordinary~~  
34 ~~Session of the Statutes of 2008 is repealed.~~